

HEALTH SYSTEM LAW AND POLICY

Prof. Colleen M. Flood

VOLUME II

1999-2000

FACULTY OF LAW

UNIVERSITY OF TORONTO

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HEALTH SYSTEM LAW AND POLICY

[LAW 404HF]

1999/2000

Wednesday: 4.10-6.00 pm

COURSE OUTLINE

Sept 8th

INTRODUCTION

- Expectations regarding seminar participation
- Paper selection and writing
- Handout of possible paper topics
- Discussion of an interdisciplinary approach to policy analysis: law, economics, and political science
- Overview of the course

Sept 15th **Chapter One**

THE CASE FOR GOVERNMENT INTERVENTION IN HEALTH CARE: MARKET FAILURE AND DISTRIBUTIVE JUSTICE

- C. M. Flood, "Chapter 2: Arguments in Economics and Justice for Government Intervention in Health Insurance and Health Service Markets" in C. M. Flood, *International Health Care Reform: A Legal, Economic and Political Analysis* (Forthcoming, Routledge, 1999).....I, 1-21
- T. Menzel, "Equality, Autonomy and Efficiency: What Health Care System Should We Have?" (1992) 17: 1 The Jnl. of Med. & Philosophy 33.I, 22-38
- J. Dougherty, "An Axiology for National Health Insurance" (1992) 20: 1-2 Law, Medicine, & Health Care 82.I, 39-55

Supplementary Reading

T. Rice, “Can Markets Give Us The Health System We Want?” (1997) 22(2) Jnl. of Health Politics, Policy and Law 383.

N. Barr, “Economic Theory and the Welfare State: A Survey and Interpretation” (1992) XXX J. Econ. Lit. 741, at Part VI. “Assessment 2: Medical Care”.

S. Rathgeb Smith and M. Lipsky, “Privatization in Health and Human Services: A Critique” (1992) 17 (2) Jnl. of Health Politics, Policy and Law 233.

R. G. Evans, “Going for the Gold: The Redistributive Agenda Behind Market-Based Health Care Reform” (1997) 22 (2) Jnl. of Health Politics. Policy and Law 427

Sept 22nd **Chapter Two**
ALLOCATION OF HEALTH RESOURCES: BALANCING THE NEEDS OF THE MAJORITY WITH THE NEEDS OF MINORITY GROUPS

D. Callahan, “What is a Reasonable Demand on Health Care Resources: Designing a Basic Package of Benefits” (1992) 8 The Jnl. of Contemporary Health Law 1.II, 1-15

R. L. Schwartz, “Life Style, Health Status. and Distributive Justice” (1993) 3 Health Matrix 195.....II, 16-36

C. J. Halligan, ““Just What The Doctor Ordered”: Oregon’s Medicaid Rationing Process and Public Participation In Risk Regulation” (1995) 83 Georgetown Law Journal 2697.....II, 37-61

R v. Cambridge District Health Authority ex parte B. [1995] 1 FLR 1055..... II, 62-70

Supplementary Reading

Shortland v. Northland Health Ltd [1998] 1 NZLR 433

Sept 29th **Chapter Three**
AN OVFRVIEW OF THE CANADIAN HEALTH CARE SYSTEM: DOES THE SYSTEM NEED TO BE REFORMED OR DOES IT JUST NEED MORE MONEY?

The *Canada Health Act.*, S.C. 1984, c. 6.....III, 1-14

C. M. Flood, "The Structure and Dynamics of Canada's Health Care System", in J. Downie and T. Caulfield (eds.) <i>Canadian Health Law and Policy</i> (Butterworths: Toronto, 1999).	III, 15-38
C. David Naylor, "Health Care in Canada: Incrementalism Under Fiscal Duress" (1999) 18: 3 <i>Health Affairs</i> 9.	III, 39-48

Supplementary Reading

*Canada Health Action: Building On the Legacy Final Report of the National Forum on
Health* (National Forum on Health: 1997).

Oct 6th **Chapter Four**
**ALLOCATION OF HEALTH CARE RESOURCES IN THE CANADIAN
SYSTEM**

T. Caulfield, "Wishful Thinking: Defining 'Medically Necessary' in Canada" (1996) 4 <i>Health Law Journal</i> 63.	IV, 1-22
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<i>Eldridge et al. v. Attorney General of British Columbia et al.</i> , (1997), 151 DLR (4th) 577.	IV, 23-58
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<i>Cameron v. Nova Scotia (Attorney General)</i> . [1999] N.S.J. No. 33.	IV, 59-83
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Oct 13th **Chapter Five**
ABORIGINAL HEALTH & THE DETERMINANTS OF HEALTH

The Problems:

"Health and Healing" in <i>Report of the Royal Commission on Aboriginal Peoples, Vol. 3</i> (Ottawa: Canada Communication Group, 1996) 107-166, 250-278.	V, 1-78
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Impediments:

"The Context of Delivery of Health Services to Status Indians and Inuit by Medical Services Branch," Program Transfer and Policy Development. Medical Services Branch (Report), September 6, 1988.	V, 79-90
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Suggested Solutions:

“Strengthening Aboriginal Governance”, in *Gathering Strength: Canada's Aboriginal Action Plan* (Ottawa: Ministry of Indian Affairs and Northern Development, 1997).....V, 91-104

Oct 20th
NO CLASS

Oct 27th **Chapter Six**
HEALTH CARE REFORM: REGULATING THE NUMBERS OF, LOCATION OF, AND INCOMES OF PHYSICIANS

Waldman v. British Columbia (Medical Services Commission) (1997), 150 D.L.R. (4th) 405.VI, 1-92

D. Orentlicher, “Paying Physicians More to Do Less: Financial Incentives to Limit Care” (1996) 30 University of Richmond Law Review 155.VI, 93-128

Supplementary Reading

G. L. Stoddart, M. L. Barer, R. G. Evans, V. Bhatia, “Why Not User Charges? The Real Issues” The Premier’s Council on Health, Well-being and Social Justice, September, 1993.

C. M. Flood, “Will Supplementary Private Insurance Reduce Waiting Lists?” *Canadian Health Facilities Law Guide*, September 24, 1996

S. M. Hutton, “Physician Freedom of Contract in Ontario: An Economic Justification for the Ban on Extra-Billing with Some Recommendations for Structural Change” (1989) 47 University of Toronto Law Review (Supp.) 780

M.L. Barer and L. Wood, "Common Problems, Different Solutions: Learning from International Approaches to Improving Medical Services Access for Underserved Populations" (1997), 20:2 Dalhousie Law Journal 321

Nov 3rd **—READING WEEK—NO CLASS**

✈ Nov 10th **Chapter Seven**
HEALTH CARE REFORM: DEVOLUTION, DEINSTITUTIONALIZATION AND THE SHIFT TO HOME CARE

J. Lomas, J. Woods, & G. Veenstra, “Devolving

Authority for Health Care in Canada's Provinces: 1. An Introduction to the Issues" (1997) 156: 3 Can. Med. Assoc. Jnl. 317--377.	VII, 1-13
C. M. Flood, "Accountability of Health Service Purchasers: Comparing Internal Markets and Managed Competition Reform Models" (1997) 20: 2 Dalhousie Law Journal 470, 492-507	VII, 14-22
Health Services Restructuring Commission, News Release -- Health Services Restructuring Commission Releases Metro Toronto Plans, March 6, 1997.	VII, 23-28
Janet E. Fast et al., <i>Conceptualizing and Operationalizing the Costs of Informal Elder Care</i> (Final Technical Report to the National Health Research Development Program (NHRDP) March 17, 1997), p. 1-15.....	VII, 29-43
J. Coutts, "Health-care cuts hit women hardest, economists told". <i>The Toronto Globe and Mail</i> , Monday, August 25, 1997, p. A5.....	VII, 44

Supplementary Reading

Pembroke Civic Hospital v. Ontario (Health Services Restructuring Commission) [1997]
O.J. No. 3142 (No. 394/97)

Nov 17th **Chapter Eight**

HEALTH CARE REFORM INTERNATIONALLY: MANAGED CARE, MANAGED COMPETITION, AND INTERNAL MARKETS

A. C. Enthoven, "The History and Principles of Managed Competition" (1993 Supp.) 12 Health Affairs 24.	VIII, 1-26
F. T. Schut and H. E. G. M. Hermans, "Managed Competition Reforms in the Netherlands and its Lessons for Canada" (1997) 20: 2 Dalhousie Law Journal 437--469.	VIII, 27-43
J. L. Grand, "Competition, Cooperation, Or Control? Tales From the British National Health Service" (1999) 18: 3 Health Affairs 27.....	VIII, 44-50

Supplementary Reading

D. Mechanic, "Managed Care: Rhetoric and Realities" (1996) 31(2) Inquiry 124.

P. Allen "Contracts in the National Health Service Internal Market" (1995) 58 (3)
Modern Law Review Limited 321

Nov 24th **Chapter Nine**
REGULATING QUALITY

L. McNamara and E. Nelson, "Regulation of Health
Care Professionals", in J. Downie & T. Caulfield (eds.),
Canadian Health Law and Policy (Butterworths:
Toronto, 1999), pp. 51-78.....IX, 1-16

C.M. Flood, "Chapter 7: Achieving Quality in a
Competition-Oriented System", in C.M. Flood,
International Health Care Reform: A Legal,
Economic and Political Analysis (Forthcoming,
Routledge: London, 1999).....IX, 17-45

Dec 1st **Chapter Ten**
CANADA'S PHARMACEUTICAL INDUSTRY

Health Canada, Health System and Policy Division,
Drug Costs in Canada, 1--9.X, 1-11

Review of Section 14 of the Patent Act Amendment
1992 (Chapter 2, Statutes of Canada, 1993): Fifth
Report of the Standing Committee on Industry
(April 1997).X, 12-48

R. G. Elgie, "Regulating Prices of Patented
Pharmaceuticals in Canada: The Patented Medicine
Prices Review Board" (May 1996) 13: 2 Food, Drug,
Cosmetic and Medical Device Law Digest 80--83.X, 49-57

Bristol-Myers Squibb Canada Inc. v. Canadian
Coordinating Office for Health Technology
Assessment [1998] O.J. No. 1404.X, 58-69

CLASSES END